

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

HARRY NIE, #1417718,

Petitioner,

v.

ACTION NO. 2:11cv666

HAROLD W. CLARKE, Director,
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violations of federal rights pertaining to petitioner's convictions on September 14, 2009, in the Prince William County Circuit Court, for five counts of incest and five counts of aggravated sexual battery, as a result of which he was sentenced to serve a total of 100 years with 80 years suspended, leaving a total time to serve of 20 years.

The matter was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Report and Recommendation filed August 10, 2012 recommends dismissal of the petition, denying Petitioner's preliminary motions (ECF Nos. 2, 3, 4, 16, 18, and 26) and granting Petitioner's motion

to supplement his petition (ECF No. 17). Each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. On August 17, 2012, the Court received petitioner's Objections to the Report and Recommendation, which was filed as a "Motion to Object" (ECF No. 29) and supporting brief (ECF Nos. 30 and 31). Also, on August 27, 2012, the Court received Petitioner's "Motion to Supplement Motion to Object. (ECF No. 32). The respondent filed no response to the objections and the time for responding has now expired.

The Court, having reviewed the record and examined the objections filed by petitioner to the Report and Recommendation, including those in Petitioner's Motion to Supplement, and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report and Recommendation filed August 10, 2012. It is, therefore, **ORDERED** that Petitioner's preliminary motions (ECF Nos. 2, 3, 4, 16, 18, and 26) are hereby **DENIED**; Petitioner's Motion to Supplement (ECF No. 17) is **GRANTED**; and Petitioner's Motion to Supplement Motion to Object (ECF No. 32) is **GRANTED**. It is, further, **ORDERED** that Respondent's Motion to Dismiss is **GRANTED**, and the Petitioner's petition is **DENIED** and **DISMISSED** with prejudice.

Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a written

notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk shall mail a copy of this Final Order to petitioner and counsel of record for respondent.

/s/
Rebecca Beach Smith
Chief
United States District Judge - *RBS*

REBECCA BEACH SMITH
CHIEF UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

September 13, 2012